

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ESTATE OF CLARENCE JESS
GROESBECK, et al.,

Defendants.

Case No. 2:16-cv-01985-RAJ

**STIPULATION REGARDING LIEN
PRIORITY BETWEEN THE UNITED
STATES AND DEUTSCHE BANK**

The United States of America and Defendant Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2005-B, Asset Backed Passthrough Certificates ("Deutsche Bank") (collectively, the "parties"), through their undersigned counsel, hereby stipulate and agree as follows:

1. The United States brought this action to reduce to judgment outstanding federal tax assessments against Clarence Jess Groesbeck, who is deceased, for the 1999 through 2003 tax years, and to foreclose the related federal tax liens against certain real properties.

2. One of the real properties at issue in this action is the property at 1224 East Blackburn Road, Mt. Vernon, Washington 98274 ("1224 East Blackburn").

3. On November 30, 1993, the C. Jess Groesbeck M.D., A.P.C., Profit Sharing Plan, through its trustee, Clarence Jess Groesbeck, acquired titled to 1224 East Blackburn via statutory warranty deed.

4. On May 10, 2002, the Profit Sharing Plan transferred 1224 East Blackburn to Mr. Groesbeck individually, for no consideration, via quit claim deed. Also on May 10, 2002, Mr. Groesbeck obtained a \$198,750 loan from Option One Mortgage Corporation secured by a deed of trust against 1224 East Blackburn recorded with the Skagit County Auditor.

5. On August 18, 2005, Mr. Groesbeck and his wife, Defendant Sylvia Groesbeck, refinanced the Option One loan with a \$202,000 loan from New Century Mortgage Corporation, secured by a new deed of trust against 1224 East Blackburn. The certified Settlement Statement (HUD-1) from this refinance confirms that, through this refinancing, the Option One loan balance was paid in full.

6. The parties agree that under Washington law, a refinancing lender is equitably subrogated to the lien interest of the lender whose loan the refinancing lender paid off. *See Columbia Community Bank v. Newman Park, LLC*, 304 P.3d 472, 475-76 (Wash. 2013) (*en banc*); *see also Sygitowicz v. United States*, No. 06-cv-962Z, 2007 WL 2496095, at *5 (W.D. Wash. Aug. 30, 2007) (Washington recognizes the doctrine of equitable subrogation). Under relevant local law, therefore, New Century Mortgage Corporation is equitably subrogated to Option One's lien interest in 1224 East Blackburn.

7. Deutsche Bank is the holder of the promissory note, which is endorsed, secured by New Century Mortgage Corporation's deed of trust against 1224 East Blackburn. Under

1 Washington law, therefore, Deutsche Bank is entitled to enforce the deed of trust. *See Deutsche*
2 *Bank Nat'l Trust Co. v. Slotke*, 367 P.3d 600, 603-06 (Wash. App.), *rev. denied*, 377 P.3d 746
3 (Wash. 2016).

4 8. On August 22, 2005, the United States recorded with Skagit County the first of
5 several federal tax liens against Mr. Groesbeck's property and rights to property based on federal
6 tax assessments against Mr. Groesbeck.

7 9. The parties agree that pursuant to 26 U.S.C. § 6323(i)(2), where, under local law,
8 one person is subrogated to the rights of another with respect to a lien or interest, that person is
9 subrogated to such rights for purposes of determining priorities with respect to federal tax liens.
10 *See Sygitowicz*, 2007 WL 2496095, at *5.

11 10. As stated above, Deutsche Bank holds and can enforce the interest of New
12 Century Mortgage Corporation, which is subrogated to Option One's rights in 1224 East
13 Blackburn. In addition Option One perfected its lien interest in 1224 East Blackburn before the
14 United States perfected its lien interest in that property. The parties thus agree that pursuant to
15 26 U.S.C. § 6323(i)(2), New Century has an interest in 1224 East Blackburn, which Deutsche
16 Bank can enforce, that is superior to the United States' interest.

17 11. The United States and Deutsche Bank thus stipulate and agree that any
18 outstanding balance on New Century Mortgage Corporation's loan to the Groesbecks secured by
19 1224 East Blackburn has priority over the United States' federal tax liens against 1224 East
20 Blackburn based on Mr. Groesbeck's liabilities for the 1998 through 2003 tax years.

21 12. Should the United States prevail in this action, Deutsche Bank would not oppose
22 the judicial sale of 1224 East Blackburn. The parties agree that, prior to seeking a final order of
23 sale, they will provide accountings of their interests in that property setting forth the disposition

1 of the property's sale proceeds, and the United States will submit a proposed order of sale
2 providing for the payment of any balance on the New Century loan secured by that property.

3 13. The parties to this Stipulation agree to bear their own costs and attorney fees,
4 except the costs incurred in selling 1224 East Blackburn. Those costs will be reimbursed from
5 the proceeds of the property's sale prior to satisfying the outstanding liens on the properties.

6 14. Upon the parties' execution of this Stipulation and the Court's endorsement of the
7 Order, Deutsche Bank shall be treated as a non-party with respect to the United States' claims in
8 this action, including discovery related to the United States' claims, unless the Court orders
9 otherwise.

10 WHEREFORE, the parties respectfully request that the Court adopt this
11 Stipulation by signing the endorsement at the close of this filing pursuant to LCR 10(g).
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13 Dated: December 19, 2018

Respectfully submitted,

14 RICHARD E. ZUCKERMAN
15 Principal Deputy Assistant Attorney General

16 /s/ Charles J. Butler
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8 *Attorney for Deutsche Bank*

9 IT IS SO ORDERED.

10 Dated: December 21, 2018

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13 The Honorable Richard A. Jones
14 United States District Judge
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